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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/764,215	01/23/2004	Boon Peng Chew	P142M	9145

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THE PROCTER & GAMBLE COMPANY
Global Legal Department - IP
Sycamore Building - 4th Floor
299 East Sixth Street
CINCINNATI, OH 45202

EXAMINER

VAKILI, ZOHREH

ART UNIT	PAPER NUMBER
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1614

MAIL DATE	DELIVERY MODE
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08/04/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/764,215	Applicant(s) CHEW ET AL.	
	Examiner ZOHREH VAKILI	Art Unit 1614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 July 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 6-17 is/are pending in the application.
- 4a) Of the above claim(s) 10-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 6-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims 1-4 and 6-17 are presented for examination.

A request for continued examination under 37 C.F.R. 1.114, including the fee set forth in 37 C.F.R. 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 C.F.R. 1.114, and the fee set forth in 37 C.F.R. 1.17(e) has been timely paid, the finality of the previous Office Action has been withdrawn pursuant to 37 C.F.R. 1.114. Applicant's submission filed July 8, 2009 has been received and entered into the present application. Claims 10-17 are withdrawn. Claims 1-4 and 6-9 are pending and are herein examined on the merits.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4 and 6-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Oliveira et al. (US Pub. No. 2003/0157239 A1).

Oliveira et al. teach a composition that has high protein, low soluble-sugar, oil containing soybean meal suitable for use as a partial or full replacement of fish meal and other protein and energy sources in the manufacture of fish and land animal feeds

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and pet foods. This syrup is also suitable to be used as a taste enhancer for animal feed (typically added to the soybean meal) (see abstract). The soybean meal of this invention also is useful as a protein and energy source in other manufactured animal feeds, such as shrimp, piglets, calves and pet animals (for example, cats and dogs) (see page 4, paragraph 0040). Oliveira et al. further teach using 25.7 mg of astaxanthin per 1883.0257 g composition, which corresponds to 0.00136% weight of the composition (see page 6, table 2). The reference anticipates the claims.

Response to Arguments

As Applicant has indicated claim 1 is directed to a composition comprising astaxanthin wherein the composition is adapted for use by a companion animal and wherein the composition is selected from the group consisting of dog food compositions, cat food compositions and combinations thereof and wherein the companion animal is selected from the group consisting of dogs and cats. Further, Applicants respectfully disagree with the Office's characterization of the soybean meal of Oliveira. As best understood by Applicants, Oliveira fails to put forth any disclosure that the soybean is a source of astaxanthin. A search of the Oliveira reference reveals that the word "astaxanthin" appears in two locations: in a comment regarding superscript number 1 in Table 1 and in a listing of nutrient compositions in Table 2. As best understood by Applicants, neither location of the word "astaxanthin" in the Oliveira reference indicates that the soybean meal is the source of the astaxanthin. Tables 1 and 2 are both

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contained within Example 2 of Oliveira wherein the diets of Example 1 are fed to Atlantic Salmon. As best understood by Applicants, therefore, Oliveira fails to disclose that the soybean meal comprises astaxanthin and while Oliveira may disclose that the soybean meal may be fed to dogs and cats, the only disclosure with regards to a composition comprising astaxanthin is in fish diets fed to Atlantic Salmon. Example 2. As best understood by Applicants, therefore, Oliveira fails to teach a composition comprising astaxanthin, wherein the composition is selected from the group consisting of dog food compositions, cat food compositions and combinations thereof and wherein the companion animal is selected from the group consisting of dogs and cats. Oliveira, therefore, fails to anticipate the claims. Applicants respectfully request reconsideration and withdrawal of the rejection.

Examiner does not agree with Applicants' argument above. Applicant has taken pieces of the reference and has made his own interpretation of the reference.

Applicant needs to take the reference in its entirety and not pieces of it, since the reference as the whole anticipates the claimed invention. Very simply Oliveira et al. discloses a high protein, low soluble-sugar, oil containing **soybean meal** suitable for use as a partial or full replacement of fish meal and other protein and energy sources in the manufacture of **fish and land animal feeds** and **petfoods (Emphasis added) (see abstract)**. See paragraph 0040 as quoted: "the **soybean meal** of this invention also is useful as a protein and energy source in other manufactured animal feeds, particularly for carnivores and omnivores, for example, shrimp, piglets, calves and **pet animals (for example, cats and dogs)**". Further, the reference teaches the elements

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of the **soybean meal** as seen in Example 2, page 5, Table 1, the formulation of the soybean meal is disclosed which contains constant ingredients and as explained in detail one the elements in constant ingredients is astaxanthin. Further, Table 2 discloses the elements of the composition which include the amount of astaxanthin in mg. As long as it is taught by Oliveira that the energy source composition soy bean meal further comprising astaxanthin can be fed to animals such as fish as seen in Example 2. Therefore, the soybean meal can also be fed to pet animals such as cats and dogs as mentioned in the abstract and paragraph 0040. Therefore, Oliveira et al. anticipate the claims.

Applicant's arguments were considered in its entirety but failed to be persuasive.

Conclusion

No claims of the present application are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zohreh Vakili whose telephone number is 571-272-3099. The examiner can normally be reached on 8:30-5:00 Mon.-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ardin Marschel can be reached on 571-272-0718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Zohreh Vakili

Patent Examiner 1614

July 28, 2009

/Ardin Marschel/

Supervisory Patent Examiner, Art Unit 1614